

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

RECEIVED

APR 14 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of  
MARTHA J. HUBER, et al.

For Construction Permit for a  
New FM Station on Channel 234A  
in New Albany, Indiana

)  
) MM Docket No. 93-51  
)  
) File Nos. BPH-911114ME,  
) et al.  
)

TO: Honorable Richard L. Sippel  
Administrative Law Judge

PETITION TO ENLARGE ISSUES

Martha J. Huber (Huber), by her attorneys, now petitions to have the following issues specified against Midamerica Electronics Service, Inc. (Midamerica):

To determine whether Midamerica Electronics Service, Inc. is financially qualified to construct and to operate its proposed station;

To determine whether Midamerica Electronics Service, Inc. falsely certified in its application that it was financially qualified;

To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Midamerica Electronics Service, Inc. is qualified to construct and to operate its proposed station.

I. Procedural Matters

This petition is timely pursuant to Section 1.229(b)(1) of the Commission's rules because it is being filed within thirty days after release of the hearing designation order on March 15, 1993.

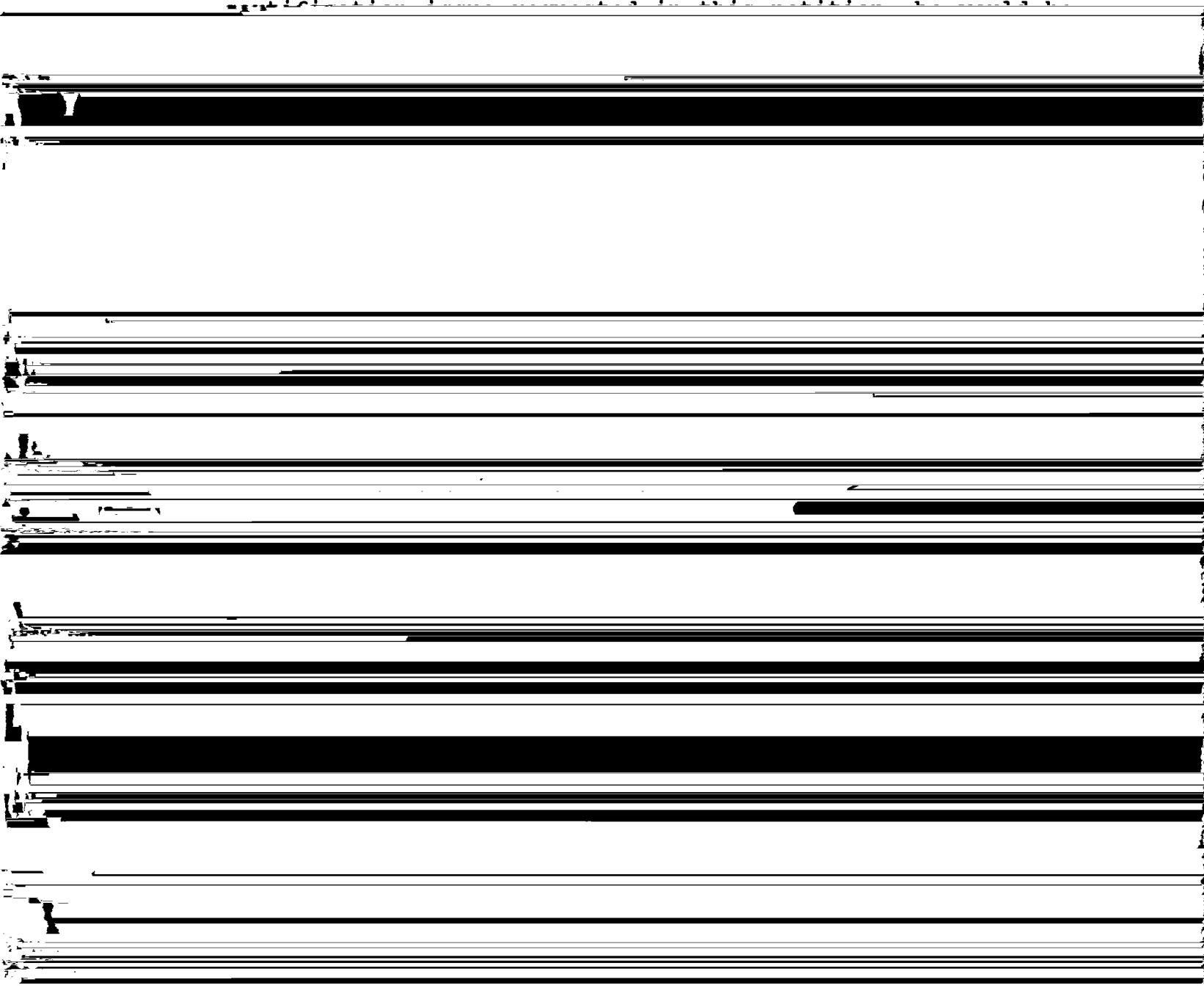
The allegations of fact upon which this petition are based are supported by the applications of Midamerica and the other applicants. The applications may be officially noticed.

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The petition therefore complies with Section 1.229(d) of the Commission's rules.

Pursuant to Section 1.229(e) of the Commission's rules, Huber is identifying the documents she wishes to be produced and the depositions she wishes to take in the attached appendix to this petition.

If the Presiding Judge adds the false financial



Statement, "Equipment Data." In its application, Midamerica does not claim ownership of its transmitter site, but claims it obtained reasonable assurance of site availability from Steve Aulbach, the owner's agent. See Section VII. The applicant also proposes to install auxiliary power at its station. Engineering Statement, P. 8.

In Section III of Midamerica's application, Peter C.L. Boyce, Midamerica's President, certified that Midamerica was financially qualified. The listed estimate of the funds needed to construct Midamerica's station and to operate the station for three months without revenue was only \$85,000. See Section III, Question 2.

Midamerica's estimate of construction and operating expenses is far lower than the estimates of other applicants in this proceeding. Rita Reyna Brent, the applicant with the next lowest cost estimates, estimates that she will need \$180,000, or over twice as much money as Midamerica.<sup>2</sup> D.E.K.W. Communications, Inc. estimates that it will need \$502,390, or almost six times as much money as Midamerica. Staton Communications, Inc. estimates that it will need \$416,303.79, while Ms. Huber estimates that \$281,078 will be needed.<sup>3</sup>

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<sup>2</sup> Copies of the financial qualifications pages of the other applicants are submitted as Attachment 2 to this opposition.

<sup>3</sup> Adams Rib, Inc., the other applicant in this proceeding, filed an FCC Form 340, which does not require cost estimate information.

The average of the cost estimates of the applicants

1. The average of the cost estimates of the applicants

times higher than Midamerica's estimates. D.E.K.W.'s cost estimates are almost six times higher than Midamerica's estimates, and every applicant's estimated costs are more than twice as high as Midamerica's estimates. Clearly, the large differences between the cost estimates of Midamerica and the other applicants justify the addition of a financial qualifications issue.

Moreover, Midamerica's \$85,000 estimate is much lower than the \$150,388 estimate that was found unreasonable in Columbus Broadcasting Corporation. Indeed, the applications were filed 4-1/2 years after the Columbus applications were filed, so it would be expected that the estimates in this proceeding would be higher. Moreover, Midamerica does not propose the cheapest possible facility. It proposes to construct a new tower instead of renting space on an existing tower. It will have to lease or to purchase its transmitter site, since it does not own the site. It proposes to use auxiliary power. If a \$150,000 estimate for a Class A station is inherently unreasonable, Midamerica's \$85,000 estimate is

Commission to believe that for \$85,000, it will purchase and/or construct an antenna, transmitter, transmitter site, tower, and other equipment, as well as program, sell and promote its radio station for three months. Its claim falls well outside the zone of reasonableness, and a financial qualifications issue must be specified.

A false financial certification issue must also be specified. If an applicant's financial certification is false, issues will be specified to determine "whether the false certification involves misrepresentation." Certification of Financial Qualifications by Applicants for Broadcast Station Construction Permits, 2 FCC Rcd 2122, 62 RR 2d 638, 639 (1987). Midamerica's cost estimates are so low that its financial certification was clearly false instead of just technically deficient. Boyce "has been involved in the construction or rebuilding of many broadcasting facilities" (Application, Exhibit No. 3), so the estimates cannot be attributed to lack of knowledge. Indeed, fraudulent intent can be inferred from Boyce's experience and the sheer unreasonableness of Midamerica's estimates. See Capital City Broadcasting Company, FCC 93R-6 (released March 11, 1993) at ¶29, citing David Ortiz Radio Corp. v. FCC, 941 F.2d 1253, 1260 (D.C. Cir. 1991). "Fraudulent intent can also be inferred from a motive to deceive." Capital City Broadcasting Company, supra, at ¶32. Here, Midamerica had an obvious motive to falsely claim it was financially qualified.

Accordingly, Huber asks the Presiding Judge to specify the issues listed above.<sup>4</sup>

Respectfully submitted,

MARTHA J. HUBER

By Morton L. Berfield  
Morton L. Berfield

By John J. Schauble  
John J. Schauble

Cohen and Berfield, P.C.  
1129 20th Street, NW, #507  
Washington, DC 20036  
(202) 466-8565

Its Attorneys

Date: April 14, 1993

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<sup>4</sup> It is also noteworthy that in its standardized document production, Midamerica did not produce any financing documents as required by Section 1.325(c)(1)(v) of the Commission's rules. As shown in Midamerica's application, Midamerica is relying upon corporate funds and funds from Boyce and Young. While Huber will be filing a motion to compel Midamerica to produce the required documents, Midamerica's failure to comply with document production only raises further doubts about its financial qualifications.

FCC 301

## APPLICATION FOR CONSTRUCTION PERMIT FOR COMMERCIAL BROADCAST STATION

For COMMISSION Fee Use Only

FEE NO:

FEE TYPE

FEE AMT:

ID SEQ:

For APPLICANT Fee Use Only

Is a fee submitted with this  
application?☒ Yes ☐ NoIf fee exempt (see 47 C.F.R. Section 1.1112),  
indicate reason therefor (check one box):☐ Noncommercial educational licensee☐ Governmental entity

FOR COMMISSION USE ONLY

BPH-911115MK  
FILE NO.

## Section I - GENERAL INFORMATION

1. Name of Applicant MIDAMERICA ELECTRONICS SERVICE, INC.			Send notices and communications to the following person at the address below:		
Street Address or P.O. Box 410 Mt. Tabor Road			Name Peter C. L. Boyce President MIDAMERICA Electronics Service, Inc.		
City New Albany	State IN	ZIP Code 47150	City New Albany	State IN	ZIP Code 47150
Telephone No. (Include Area Code) 812 945-1209			Telephone No. (Include Area Code) 812 945-1209		

2. This application is for:

☐

AM

☒

FM

☐

TV

(a) Channel No. or Frequency

234A

(b) Principal  
Community

City

New Albany

State

IN

(c) Check one of the following boxes:

☒

Application for NEW station

☐

MAJOR change in licensed facilities; call sign: \_\_\_\_\_

☐

MINOR change in licensed facilities; call sign: \_\_\_\_\_

☐

MAJOR modification of construction permit; call sign: \_\_\_\_\_

File No. of construction permit: \_\_\_\_\_

☐

MINOR modification of construction permit; call sign: \_\_\_\_\_

File No. of construction permit: \_\_\_\_\_

☐

AMENDMENT to pending application; Application file number: \_\_\_\_\_

NOTE: It is not necessary to use this form to amend a previously filed application. Should you do so, however, please submit only Section I and those other portions of the form that contain the amended information.

3. Is this application mutually exclusive with a renewal application?

☐

Yes

☒

No

If Yes, state:

Call letters

Community of License

City

State



# Section 11 - LEGAL QUALIFICATIONS (Page 2)

6. List the applicant, parties to the application and non-party equity owners in the applicant. Use one column for each individual or entity. Attach additional pages if necessary.

(Read carefully - The numbered items below refer to line numbers in the following table.)

1. Name and residence of the applicant and, if applicable, its officers, directors, stockholders, or partners (if other than individual also show name, address and citizenship of natural person authorized to vote the stock). List the applicant first, officers next, then directors and, thereafter, remaining stockholders and partners.
2. Citizenship.
3. Office or directorship held.
4. Number of shares or nature of partnership interests.
5. Number of votes.
6. Percentage of votes.
7. Other existing attributable interests in any broadcast station, including the nature and size of such interests.
8. All other ownership interests of 5% or more (whether or not attributable), as well as any corporate officership or directorship, in broadcast, cable, or newspaper entities in the same market or with overlapping signals in the same broadcast service, as described in 47 C.F.R. Section 73.3555 and 73.501, including the nature and size of such interests and the positions held.

	MIDAMERICA Electronics Service, Inc. 410 Mt. Tabor Road New Albany, IN 47150	Peter C. L. Boyce 410 Mt. Tabor Road New Albany, IN 47150	Larry A. Young 1018 Harbrook New Albany, IN 47150
2	U.S. Corporation	U.S.A.	U.S.A.
3	N/A	President, Treasurer and Director	Secretary
4	N/A	100	0
	N/A	100	0
6	N/A	100%	0%
7	None	50% Southeast Indiana Radio, Inc. (WKRP, North Vernon, IN) (WINN, North Vernon, IN)	None
8	None	None	None

### SECTION III - FINANCIAL QUALIFICATIONS

NOTE: If this application is for a change in an operating facility do not fill out this section.

1. The applicant certifies that sufficient net liquid assets are on hand or that sufficient funds are available from committed sources to construct and operate the requested facilities for three months without revenue.

☒ Yes ☐ No

Section V-B - FM BROADCAST ENGINEERING DATA

FOR COMMISSION USE ONLY

File No. \_\_\_\_\_

ASB Referral Date \_\_\_\_\_

Referred by \_\_\_\_\_

Name of Applicant

Midamerica Electronics Service, Inc.

Call letters (if issued)

--

Is this application being filed in response to a window? ☒ Yes ☐ No

If Yes, specify closing date: November 15, 1991

Purpose of Application: (check appropriate boxes)

☒ Construct a new (main) facility

☐ Construct a new auxiliary facility

☐ Modify existing construction permit for main facility

☐ Modify existing construction permit for auxiliary facility

☐ Modify licensed main facility

☐ Modify licensed auxiliary facility

**Introduction**

This engineering report has been prepared on behalf of Midamerica Electronics Service, Inc. ("Midamerica") in support of its application to construct a new Class A FM broadcast station at New Albany, Indiana. The FM operation is proposed on Channel 234A (94.7 MHz) with an effective radiated power (ERP) of 3.0 kW (H&V) and 100 meters antenna height above average terrain (HAAT).

The closing window date for filing of the application has been set for November 15, 1991.

Exhibits requested by Section V-B of FCC Form 301 are included in this engineering report.

**Transmitter Site**

The proposed antenna will be located in Floyd County, Indiana, approximately 8.2 km (5.1 miles) west of New Albany, north of the intersection of State Route 62 and Interstate Route 64. The geographic coordinates of the proposed site are as follows:

North Latitude: 38° 17' 23"  
West Longitude: 85° 54' 38"

**Equipment Data**

Transmitter: Type approved

Antenna: Harris Corporation FML-3E, three sections, circularly polarized

COHEN, DIPPELL AND EVERIST, P. C.

Engineering Report, New Albany, Indiana  
Midamerica Electronics Service, Inc.

Page 2

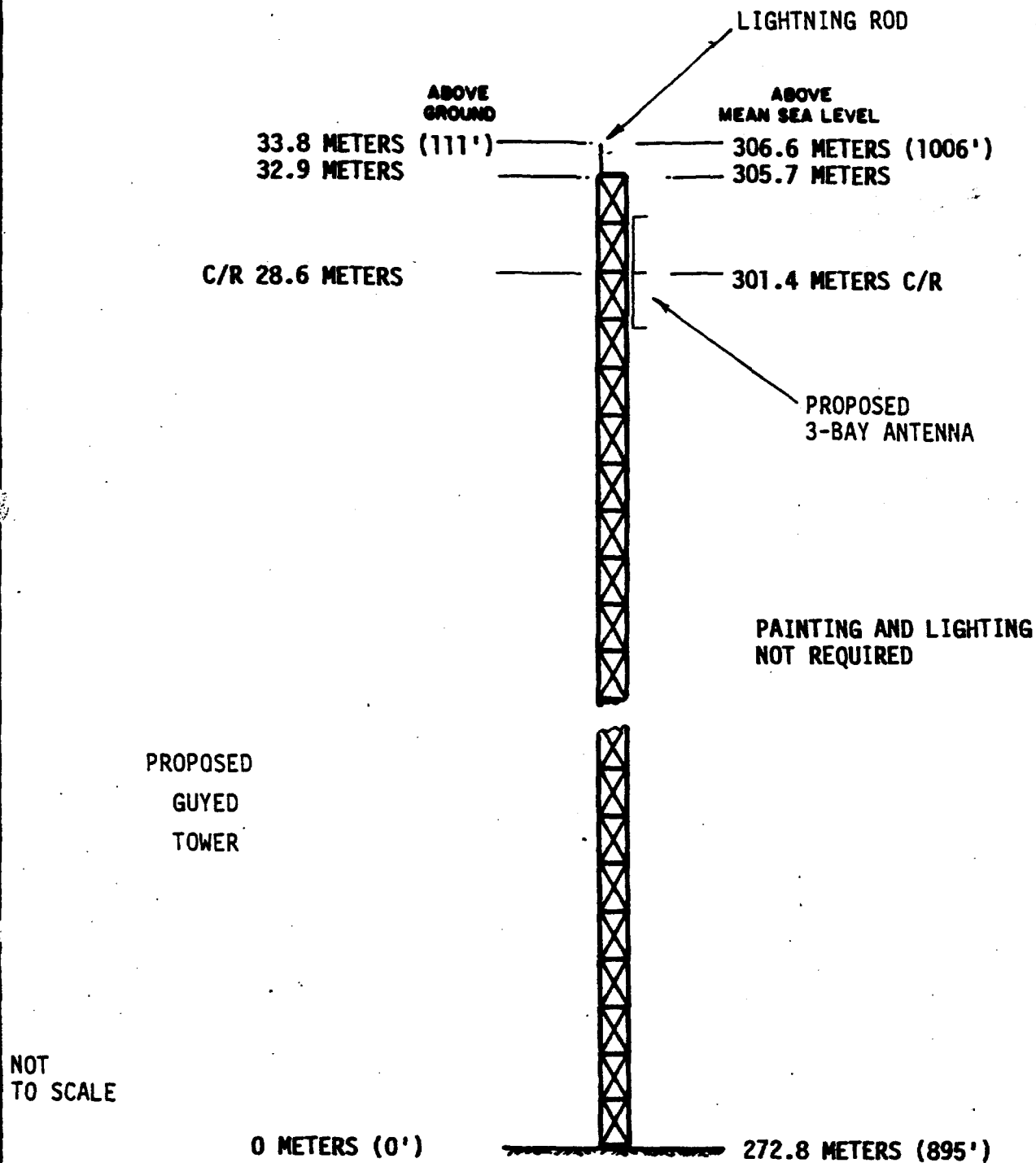
Power Data

Power input to antenna:	1.925 kW
Antenna power gain (H&V):	1.5588

- (b) Workers and the general public will not be subjected to RF radiation levels in excess of ANSI standard, C95.1-1982. Authorized personnel will be alerted to areas of the tower where potential radiation levels are in excess of the ANSI standard and the transmitter power will be reduced or terminated as necessary. A security fence with a locked gate will prevent public access to the tower.

**AUXILIARY POWER**

The applicant proposes to install auxiliary power at the proposed FM station.



VERTICAL SKETCH  
FOR THE PROPOSED FM OPERATION AT  
NEW ALBANY, INDIANA  
NOVEMBER 1991

APPLICATION FOR CONSTRUCTION PERMIT FOR COMMERCIAL BROADCAST STATION

For COMMISSION Fee Use Only	FEE NO:	For APPLICANT Fee Use Only Is a fee submitted with this application? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If fee exempt (see 47 C.F.R. Section 1.1112), indicate reason therefor (check one box): <input type="checkbox"/> Noncommercial educational licensee <input type="checkbox"/> Governmental entity
	FEE TYPE:	
	FEE AMT:	
	ID SEQ:	FOR COMMISSION USE ONLY
		FILE NO.

Section 1 - GENERAL INFORMATION

1. Name of Applicant  D.E.K.W. COMMUNICATIONS, INC.			Send notices and communications to the following person at the address below: Name James L. Winston Rubin, Winston, Diercks, Harris & Cooke		
Street Address or P.O. Box 4205 Sunset Avenue			Street Address or P.O. Box 1730 M Street, N.W., Suite 412		
City Louisville	State KY	ZIP Code 40211	City Washington	State DC	ZIP Code 20036
Telephone No. (include Area Code) (502) 776-3728			Telephone No. (include Area Code) (202) 861-0870		

2 This application is for: ☐ AM ☒ FM ☐ TV

(a) Channel No. or Frequency 234A	(b) Principal Community New Albany	City New Albany	State IN
--------------------------------------	---------------------------------------	--------------------	-------------

(c) Check one of the following boxes:

☒ Application for NEW station

☐ MAJOR change in licensed facilities; call sign: \_\_\_\_\_

☐ MINOR change in licensed facilities; call sign: \_\_\_\_\_

☐ MAJOR modification of construction permit; call sign: \_\_\_\_\_

File No. of construction permit: \_\_\_\_\_

☐ MINOR modification of construction permit; call sign: \_\_\_\_\_

File No. of construction permit: \_\_\_\_\_

☐ AMENDMENT to pending application; Application file number: \_\_\_\_\_

NOTE: It is not necessary to use this form to amend a previously filed application. Should you do so, however, please submit only Section 1 and those other portions of the form that contain the amended information.

3 Is this application mutually exclusive with a renewal application? ☐ Yes ☒ No

If Yes, state:

Call letters N/A	Community of License City State
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## SECTION III - FINANCIAL QUALIFICATIONS

NOTE If this application is for a change in an operating facility do not fill out this section.

1. The applicant certifies that sufficient net liquid assets are on hand or that sufficient funds are available from committed sources to construct and operate the requested facilities for three months without revenue.

☒ Yes ☐ No

2. State the total funds you estimate are necessary to construct and operate the requested facility for three months without revenue.

\$ 502,390

3. Identify each source of funds, including the name, address, and telephone number of the source (and a contact person if the source is an entity), the relationship (if any) of the



# SECTION III - FINANCIAL QUALIFICATIONS

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☒ Yes ☐ No  
7

2. State the total funds you estimate are necessary to construct and operate the requested facility for three months without revenue.

\$ 416,303.79

3. Identify each source of funds, including the name, address, and telephone number of the source (and a contact person if the source is an entity), the relationship (if any) of the source to the applicant, and the amount of funds to be supplied by each source.

Source of Funds (Name and Address)	Telephone Number	Relationship	Amount
Home Federal Trust Bank of Georgia 104 Green Street Gainesville, GA 30501 Attn: W. A. Gainey, V.P.	404/535-9600	Bank	\$425,000.00
The Applicant's principals are legally obligated to the guarantee of a loan up to \$425,000.00 for this facility.			

APPLICATION FOR CONSTRUCTION PERMIT FOR COMMERCIAL BROADCAST STATION

For COMMISSION Fee Use Only	FEE NO:	For APPLICANT Fee Use Only
	FEE TYPE:	Is a fee submitted with this application? <input type="checkbox"/> Yes <input type="checkbox"/> No
	FEE AMT:	If fee exempt (see 47 C.F.R. Section 1.1112), indicate reason therefor (check one box): <input type="checkbox"/> Noncommercial educational licensee <input type="checkbox"/> Governmental entity
	ID SEQ:	FOR COMMISSION USE ONLY  FILE NO.

Section 1 - GENERAL INFORMATION

1. Name of Applicant  Martha J. Huber			Send notices and communications to the following person at the address below: Name Martha J. Huber		
Street Address or P.O. Box 1927 Plum Hill Way			Street Address or P.O. Box 1927 Plum Hill Way		
City Flowds Knobs	State TN	ZIP Code 47119	City Flowds Knobs	State IN	ZIP Code 47119

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1. The applicant certifies that sufficient net liquid assets are on hand or that sufficient funds are available from committed sources to construct and operate the requested facilities for three months without revenue.

☒ Yes ☐ No

2. State the total funds you estimate are necessary to construct and operate the requested facility for three months without revenue.

\$ 281,078

3. Identify each source of funds, including the name, address, and telephone number of the source (and a contact person if the source is an entity), the relationship (if any) of the source to the applicant, and the amount of funds to be supplied by each source.

Source of Funds (Name and Address)	Telephone Number	Relationship	Amount
Citizens Fidelity Bank and Trust Company Indiana P.O. Box 1248 New Albany, IN 47151-1248 Contact Person: Leo Tierney	(812) 945-2265	Bank Loan	\$350,000

R

APPLICATION FOR CONSTRUCTION PERMIT FOR COMMERCIAL BROADCAST STATION

For COMMISSION Fee Use Only	FEE NO:	For APPLICANT Fee Use Only Is a fee submitted with this application? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If fee exempt (see 47 C.F.R. Section 1.1112), indicate reason therefor (check one box): <input type="checkbox"/> Noncommercial educational licensee <input type="checkbox"/> Governmental entity
	FEE TYPE:	
	FEE AMT:	
	ID SEQ:	FOR COMMISSION USE ONLY BPH-91115MC FILE NO.

Section I - GENERAL INFORMATION

1 Name of Applicant Rita Reyna Brent			Send notices and communications to the following person at the address below: Name John Wells King		
Street Address or P.O. Box 2106 St. Andrews Road			Street Address or P.O. Box Suite 600 - 2000 M Street N.W.		
City Jeffersonville	State Ind.	ZIP Code 47130	City Washington, D.C.	State	ZIP Code 20036
Telephone No. (Include Area Code) (812) 283-7886			Telephone No. (Include Area Code) (202) 331-0606		

2 This application is for: ☐ AM ☒ FM ☐ TV

(a) Channel No. or Frequency  
234A 94.7

(b) Principal Community	City	State
	New Albany	Ind.

(c) Check one of the following boxes:

☒ Application for NEW station

☐ MAJOR change in licensed facilities; call sign: \_\_\_\_\_

☐ MINOR change in licensed facilities; call sign: \_\_\_\_\_

☐ MAJOR modification of construction permit; call sign: \_\_\_\_\_

File No. of construction permit: \_\_\_\_\_

☐ MINOR modification of construction permit; call sign: \_\_\_\_\_

File No. of construction permit: \_\_\_\_\_

☐ AMENDMENT to pending application; Application file number: \_\_\_\_\_

NOTE: It is not necessary to use this form to amend a previously filed application. Should you do so, however, please submit only Section I and those other portions of the form that contain the amended information.

3 Is this application mutually exclusive with a renewal application? ☐ Yes ☒ No

If Yes, state:

Call letters	Community of License	
	City	State

# SECTION III - FINANCIAL QUALIFICATIONS

NOTE: If this application is for a change in an operating facility do not fill out this section.

1. The applicant certifies that sufficient net liquid assets are on hand or that sufficient funds are available from committed sources to construct and operate the requested facilities for three months without revenue.

☒ Yes ☐ No

2. State the total funds you estimate are necessary to construct and operate the requested facility for three months without revenue.

\$ 180,000.00

3. Identify each source of funds, including the name, address, and telephone number of the source (and a contact person if the source is an entity), the relationship (if any) of the source to the applicant, and the amount of funds to be supplied by each source.

Source of Funds (Name and Address)	Telephone Number	Relationship	Amount
Rita and Robert Brent 2106 St. Andrews Road Jeffersonville, Ind. 47130	(812) 283-7886	Applicant/ Husband	\$180,000.00

APPENDIX RE DISCOVERY

If this petition to enlarge issues is granted, Huber will take the deposition of Peter C.L. Boyce and Larry A. Young. Huber also reserves the right to notice the deposition of any other person who had a role in determining whether Midamerica was financially



any other written, recorded, transcribed, punched, taped, filmed, or graphic matter, however produced or reproduced or stored in papers, cards, tapes, discs, belts, charts, films, computer storage devices, or any other medium.

3. "Principal" includes all persons who hold a direct interest or an interest in any entity that has an interest in Midamerica, officers and directors of Midamerica, and all persons with a future right to acquire an ownership right in Midamerica.

4. "Related to" and "relating to" means contains, constitutes, embodies, pertains to, concerns, describes, arises from, emanates from, reflects, identifies, states, refers to, deals with, or is in any way pertinent to the specified subject.

5. "Or" means "and/or."

6. References to the masculine include references to the feminine and vice versa.

7. These document requests call for the production of all documents within the possession, custody, or control of Western, their principals, any officers, directors, shareholders, agents, employees, advisors, or any other person under the control of any such party.

8. If any requested document is withheld from production on the basis of a privilege, all privilege claims shall be made using the procedures established by Paragraph 6 of the Prehearing Conference Order, FCC 93M-114 (released March 19, 1993).

9. These requests are continuing in character. The parties are under a continuing obligation to supply documents responsive to